

Cite as Det. No. 18-0010, 37 WTD 183 (2018)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 18-0010
)	
...)	Registration No. . . .
)	

ETA 3079.2009; RCW 82.12.010: PRESUMPTION OF USE, BURDEN OF PROOF. There is a presumption that property acquired by Washington residents is for use in Washington if there are any underlying facts supporting the presumptive use of the property. Once the Department presents any underlying fact or facts supporting the presumption, the burden shifts to the taxpayer to rebut the presumption. The taxpayer may rebut the presumption by producing evidence and documents showing the property was never used in Washington.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

Fisher, T.R.O. – A Washington resident requests a refund of use tax paid on a boat the resident asserts was never used in Washington. Because there is no evidence that the Washington resident ever used the boat in Washington, the petition is granted.¹

ISSUE

Whether, under RCW 82.12.010(6)(a), a Washington resident is subject to use tax on a boat owned by the Washington resident [out-of-state], where the Washington resident provides credible and un rebutted testimony and evidence that the boat was never used in Washington?

FINDINGS OF FACT

. . . (“Taxpayer”) is a Washington resident living in Taxpayer owned a boat from 2015 to April 2017.

The Department of Revenue’s Compliance Division (“Compliance”) discovered Taxpayer listed the boat for sale in [Washington]. A picture on the advertisement showed the boat on a trailer with a Washington license plate. Compliance contacted Taxpayer and confirmed Taxpayer was a resident of Washington. Compliance determined that because Taxpayer is a resident of

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

Washington, there is a presumption of use of the boat in Washington. Compliance instructed Taxpayer to pay use tax on the boat.

On March 29, 2017, the day after being contacted by Compliance, Taxpayer paid \$. . . in use tax.² Taxpayer also filed a petition for administrative review, requesting a refund of the use tax paid to Washington.

Taxpayer asserts that the boat was never in Washington, and at all times was located [out-of-state] near Taxpayer provided moorage agreements covering the periods of May 1, 2015, through October 15, 2015; and May 1, 2016, through October 15, 2016, to establish that the boat was stored at a moorage slip [out-of-state]. In the winter, when the boat was not at the moorage slip, the boat was stored at Taxpayer's property [out-of-state].

Taxpayer explains that he advertised the boat for sale in [Washington] to get a wider audience in hopes of attracting more potential buyers. Taxpayer concedes the trailer has a Washington license plate, but notes he did pay Washington retail sales tax on the trailer. When Taxpayer sold the boat for \$. . . in 2017, the transaction occurred [out-of-state], and title was transferred to the new owner [out-of-state].

Compliance confirmed to the Tax Review Officer that use tax liability was imposed solely based on the presumption of use in Washington. Compliance did not identify any additional underlying facts that would support the presumption of use.

ANALYSIS

Washington imposes both a retail sales tax and a use tax. Retail sales tax is imposed on tangible personal property purchased by a consumer in this state. RCW 82.08.020; RCW 82.04.050. The use tax complements the retail sales tax and is imposed "for the privilege of using within this state as a consumer . . . [a]ny article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment . . ." on which Washington retail sales tax has not been paid unless there is an applicable statutory exemption, deduction, or exclusion. RCW 82.12.020(1).

RCW 82.12.010(5)(a) broadly defines "use":

"Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean: (a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state.

RCW 82.04.190(1) defines "consumer" as "[a]ny person who purchases, acquires, owns, holds, or uses any article of tangible personal property . . . other than for purpose of (a) resale as tangible

² The boat was valued at \$ Taxpayer was assessed \$. . . in Washington use tax, but took a credit of \$. . . in sales tax previously paid to [another state]. Taxpayer submitted proof of payment of the [out-of-state] sales tax along with his petition for administrative review.

personal property in the regular course of business. . . .” Use tax liability arises at the time the property is first put to use in this state. RCW 82.12.010(5)(a); *see also* WAC 458-20-178.

Thus, the tax applies to the first use of watercraft in this state on which Washington retail sales tax has not been paid, whether for pleasure or for business, and whether by a resident or a nonresident, unless the use is statutorily excepted or determined to be otherwise exempt. *See* Det. No. 87-105, 3 WTD 1 (1987).

There is a presumption in Washington that property acquired by Washington residents is for use within Washington. As stated in Excise Tax Advisory (ETA) 476.12.178, this presumption was first articulated by the Board of Tax Appeals in *Rimer v. Dep’t of Revenue*, Board of Tax Appeals Docket No. 5867 (1973). It was also applied in Det. No. 86-252, 1 WTD 183 (1986) and Det. No. 99-342, 19 WTD 608 (2000). ETA 476.12.178 was later renumbered to ETA 3079.2009. ETA 3079.2009 explains:

There is a presumption that a Washington resident purchases tangible personal property for possession and use within Washington, even though the resident purchases such property outside the state. The burden is on the resident to prove that the resident does not intend to use the property in Washington and has not, in fact, had possession of or used the property in this state; it is not necessary for the state to prove actual use within the state to impose the use tax.

In 1 WTD 183, we qualified the use of this presumption, stating a taxpayer is not required to prove that property purchased outside this state for use outside this state has never been used in this state, absent facts supporting presumptive use of the property in this state. *Id.* at 191-2; *see also* 19 WTD at 613 (holding the same).

Here, the boat appeared in a [Washington] Craigslist advertisement on a boat trailer with a Washington license plate. This is sufficient to support the presumptive use of the boat in Washington by Taxpayer, a Washington resident. Accordingly, the burden shifts to Taxpayer to rebut the presumption.

Taxpayer provided title documents for the boat that showed the boat was purchased [out-of-state] and that Taxpayer paid [out-of-state] sales tax on the purchase of the boat. Taxpayer also provided moorage agreements that showed the boat was stored in a slip [out-of-state], from May 1, 2015, through October 15, 2015, and May 1, 2016, to October 15, 2016. For the periods of time when the boat was not located [in a slip out-of-state], Taxpayer provided un rebutted and credible testimony that the boat was stored at Taxpayer’s property [out-of-state]. Compliance has not provided any documents or other evidence to suggest the boat was ever brought into Washington. After weighing the evidence, we conclude that Taxpayer has provided documentation and testimony sufficient to rebut the presumption of Washington use. Accordingly, we reverse the assessment of use tax.

DECISION AND DISPOSITION

Taxpayer's petition is granted.

Dated this 12th day of January 2018.